

## **General Terms of YAMAICHI ELECTRONICS Deutschland GmbH and of YAMAICHI ELECTRONICS Deutschland Manufacturing GmbH**

### **1. General**

- 1.1 Our conditions of sale and delivery (in what follows “terms of business”) apply exclusively to all of our business relationships with entrepreneurs, as understood in § 14 BGB - German Civil Code - (in what follows “purchasers”), as of 1<sup>st</sup> January 2011, whether entered into for the first time, ongoing or to be entered into in the future. They are also valid even in the event that when the respective business relationship is concluded they are not then referred to again.
- 1.2 Terms of our contractual partners that differ from our own terms of business will not be recognised unless we have expressly agreed to their validity in writing.

### **2. Offers, orders, conclusion of a contract**

- 2.1 Our offers are in principle non-binding and subject to confirmation unless they are explicitly designated as binding offers. The sending of our price list(s) is not to be regarded as an offer. The technical information, details of use and product descriptions contained in our brochures and other sales documents contain no offer to sign a guarantee agreement as it is outlined in § 443 BGB\*\*.
- 2.2 Ordering a product and/or service includes the binding offer on the part of the purchaser to purchase that product or service. We are entitled to accept the contractual offer implicit in the order within two weeks of receiving the order. The acceptance of the offer can be made by us **either** in writing **or** by means of the delivery/execution to/for the purchaser of the product/service ordered. We reserve the right to refuse orders and to do so without written declaration or providing more detailed reasons for such decisions. If in doubt, no response from us after the expiry of the deadline for acceptance should be taken as rejection.
- 2.3 If the order is made electronically we will confirm receipt of the order immediately. The confirmation of receipt itself still does not constitute any binding acceptance of the order; however it can be conjoined with a declaration of acceptance on our part.
- 2.4 In the case of verbally agreed contracts the scope of service of our deliveries will be determined through our written affirmation of the contract.

### **3. Delivery**

- 3.1 Partial deliveries or services rendered in part are permissible and oblige our contractual partner to pay the proportional price unless the partial delivery or service is unacceptable to them.
- 3.2. For supply contracts on demand the whole set of orders counts as having been ordered by the purchaser one calendar month after the expiry of the deadline agreed for the order or, if there is no agreed deadline, three calendar months after the contract is signed.
- 3.3. If the purchaser is entitled to the division of the on call contingents and does not conduct the division within one calendar month of the expiry of the respectively agreed order deadline or, if such a deadline has not been set, one month after requested by us, we may divide, deliver and charge for the complete set of orders at our discretion.
- 3.4 Our deliveries are made “ex works Munich” as long as nothing else has been explicitly agreed upon. In the case of a delivery “ex works” the seller’s and purchaser’s duties regarding the method of delivery are determined according to the International Commercial Terms (INCOTERMS® 2010) in their current amendment.
- 3.5 The delivery and service deadlines stated by us are non-binding and subject to confirmation; they can be affected by delay in supply or production, or disruptions to operations. In the case of subsequent contractual amendments or supplementations, the delivery deadlines and dates will begin anew or be postponed correspondingly, even if they had already been confirmed by us beforehand. This holds insofar as in each respective case no differing agreement has been reached with the purchaser.

3.6 Should we default on delivery for reasons for which we are responsible, our liability will be limited to the foreseeable and direct average damage.

#### **4. Default on acceptance**

- 4.1 Should the purchaser default on acceptance or violate other cooperation obligations we are authorised, regardless of our duties in accordance with clauses 3.2 and 3.3, to withdraw from the contract at our discretion and to demand the damages accruing to us through the default or violation, including additional expenses.
- 4.2 In the case of default on acceptance, the risk of accidental loss or accidental deterioration of the delivered object shall devolve onto the purchaser as of the moment at which they defaulted on acceptance.

#### **5. Prices and payments**

- 5.1 Our prices are to be understood as being principally in net cash in Euros, ex works/warehouse Munich, plus dispatch and packaging costs, insofar as nothing else is agreed in writing. Regulatory charges, customs duties and taxes are to be paid separately in the respective amounts applicable at the time of invoicing.
- 5.2 In the case of a single order with a net value of less than €100.00 we are entitled to add an additional small-order surcharge of €30.00 to our prices.
- 5.3 Our prices are valid for six weeks from the day the contract is signed. The agreed prices only apply to the respective completed order.
- 5.4 Price changes are admissible if there are more than six weeks between the signing of the contract and the agreed delivery date. If, after that period and until the completion of the delivery, the wages, material costs or cost prices (listed prices) rise in line with real market conditions or the exchange rates change, we will be entitled to raise the price appropriately, according to the increase in costs.
- 5.5 The first three deliveries will only be made if paid for in cash on delivery. For further follow-up deliveries our invoices are to be paid in full in net cash within 30 days of the date on which the invoice or an equivalent statement of payment is issued.
- 5.6 Payment deadlines are recognised as having been complied with if we have the amount at our disposal within the deadline. Our representatives and/or commissaries must only be paid by way of discharge if they provide evidence of a written authorisation of collection.
- 5.7 Should the purchaser default on their payment obligation, either in whole or in part, they must from this point onwards – notwithstanding our other further rights – pay default interest in the amount of 5% per year above the base interest rate set by the European Central Bank, insofar as we do not provide evidence of greater damages.
- 5.8 For each written warning regarding an invoice which is made after entering into default, we are entitled to demand a fixed processing fee of €5.00.
- 5.9 Offsetting or retention on the part of the purchaser is precluded unless the offsetting or retention claim is undisputed or established to be legally binding. We are entitled to avert the exercise of the right of retention by providing security, even without a guarantee.
- 5.10 If the purchaser ceases payments, has excessive debts, is subject to an application to open insolvency proceedings, or comes into default on the redemption of due drafts or cheques, our total claims will be due immediately. The same applies in the case of any other substantial decline in the purchaser's financial standing. In these cases we are entitled to demand sufficient security and to withdraw from the contract.

#### **6. Retention of title**

- 6.1 The goods remain our property until the fulfilment of all claims existing between ourselves and the purchaser (goods subject to retention of title), even if individual goods have already been paid for. A pledge or chattel mortgage of the goods subject to retention of title is not permissible.

- 6.2 In the case of the resale or passing on of goods subject to retention of title – as permitted within the framework of proper business operations – the purchaser cedes to us, at that point in time and up until repayment of all claims due to us, all future claims accruing to them from the resale or passing on of the goods to their customers as security, without particular explanations being necessary at a later date. This also extends to outstanding balances, which arise within the framework of the existing current account relationships or with the termination of those kinds of relationships between the purchaser and their customers. If the goods subject to retention of title are resold or passed on together with other objects without a unit price having been agreed for the goods subject to retention of title, the purchaser cedes to us, with priority over any other claims, that part of the total asking price or the total price obtained by the passing on of the goods that corresponds to the price of the goods subject to retention of title invoiced by us. The purchaser is authorised to collect the assigned claims arising from the resale or passing on until this authorisation is revoked; they are however not entitled to use them in any other way e.g. by assignment. The purchaser must make the customer aware of the assignment on our request, as well as issue us with the documents necessary for asserting rights against their customers e.g. invoices, and provide us with all the necessary information. The purchaser shall bear all the costs of the collection and of any possible interventions. Should the purchaser receive an exchange on the basis of the authorisation granted to them to collect the assigned claim, the property listed in these papers is transferred to us with the recognised right of security. The handing over of the objects of exchange will be replaced by the agreement that the purchaser will take charge of them for us and then immediately deliver them to us with endorsement. If the equivalent value of the claim assigned to us in cheques is paid to the purchaser or to one of their financial institutions, they are obligated to disclose receipt immediately and to then make the payment. Ownership of the cheques is transferred to us, according to our recognised rights, as soon as the purchaser receives them. The handing over of the papers will be replaced by the agreement that the purchaser will take charge of them for us and then immediately deliver them to us with endorsement.
- 6.3 If the purchaser processes the goods subject to retention of title, transform them or amalgamate them with other objects, this processing, transformation or amalgamation takes place on our behalf. We will immediately become the owner of the objects produced by means of the processing, transformation or amalgamation. Should this not be possible on legal grounds, we and the purchaser agree that we will be the owner of the new objects at every step of the processing, transformation or amalgamation. The purchaser will keep the new objects safe for us with due professional care and diligence. The objects resulting from the processing, transformation or amalgamation count as goods subject to retention of title. In the case of processing, transformation or amalgamation with other objects not belonging to us, we are entitled to co-ownership of the new objects in the ratio of the value of the processed, transformed or amalgamated goods subject to retention of title to the value of the new goods. In the case of sale or rental of the new objects, the purchaser herewith cedes to us their claim deriving from the sale or rental to their customers with all subsidiary rights as security, without further explanations being required at a later date. However, the transfer only applies in the amount that corresponds to the value of the processed, transformed or amalgamated goods subject to retention of title invoiced by us. The share of the claim assigned to us takes priority over the other claim.
- 6.4 Should the goods subject to retention of title be amalgamated with properties or movables by the purchaser, the purchaser also cedes to us the claim which is otherwise due to them as salary for the amalgamation with all subsidiary rights as security, without further particular explanations being required.
- 6.5 If the purchaser defaults on their payment obligation or on the redemption of due exchanges or cheques, either in whole or in part, or excessive debts or suspensions of payment arise, or an insolvency application is filed, we are authorised to immediately take back all goods still under retention of title. We can also make the further rights resulting from the retention of

title immediately applicable. The same applies to any other substantial decline in the financial standing of the purchaser. The purchaser shall grant us or one of our commissaries access to their entire business premises during business hours. Demand for issuance or appropriation does not constitute withdrawal from the contract. We are entitled to utilise the goods subject to retention of title with due professional care and diligence and to pursue our own satisfaction, taking into account the open claims associated with the proceeds.

- 6.6 Should the value of the security exceed by more than 20% in total our claims against the purchaser resulting from the current business relationship, we are obliged on the request of the purchaser to release the security due to them at their discretion.

## **7. Claims of the purchaser in relation to defects**

- 7.1 Only our description of the product or that of the manufacturer counts as an agreement on the quality of the goods. Public statements, promotion or advertising on the part of the manufacturer do not constitute contractual information regarding the quality of the goods.
- 7.2 The purchaser is obligated to fulfil their duties of inspection and notification of defects, as owed in accordance with § 377 HGB – German Code of Commercial Law -. Goods delivered by us count as having been approved in conformity with the contract if we do not receive a written notification from the purchaser within 14 days of receipt of the goods, or at the latest 18 days after their delivery ex works, in which is concretely disclosed what complaints are being raised. Quantity differences of less than 5% in mass-produced articles do not constitute entitlement to a claim of defect. Insofar as nothing else is agreed in writing, our deliveries will each be performed to the standard existing at the time the order is made.
- 7.3 The claims are restricted at our discretion to removal of the defect or delivery of a defect-free item (a supplementary performance). In the case of failure regarding the supplementary performance, the purchaser has the right to depreciate or to withdraw from the contract at their discretion.
- 7.4 Further claims of the purchaser, in particular those following from damages consequential to a defect, are in principle precluded. This does not apply in the case of malice, gross negligence or breach of fundamental contractual obligations by us, or in the case of injury of life, body or health. The right of the purchaser to withdraw from the contract remains unaffected.
- 7.5 Liability for defects which can be attributed to unsuitable or inappropriate use, defective assembly – in particular under non-observance of the installation instructions – or start-up by the purchaser or a third party, natural wear and tear, defective or negligent handling, unsuitable operating components or replacement materials, or chemical, electrochemical, electrical, electronic or weather influences is excluded, insofar as the fault cannot be attributed to us.
- 7.6 The warranty period for material defects and defects of title is one year.
- 7.7 The purchaser will not receive guarantees in the legal sense from us. Manufacturers' warranties remain unaffected by this.

## **8. Liability**

We will assume liability for claims for damages made by the purchaser as follows:

- a) Liability for personal injury is determined according to legal provisions.
- b) Liability for property damage is restricted to €250,000.00 per event and €500,000.00 in total.
- c) Liability for financial losses including direct losses and loss of profit is excluded.

The limitations on liability under b) and the disclaimer of liability under c) do not apply insofar as mandatory liability applies for damages to privately used objects in accordance with the law concerning product liability, or in cases of malice, gross negligence or breach of fundamental contractual obligations, or the lack of guaranteed characteristics for damages that are typical and reasonably foreseeable for this type of contract.

## **9. Reservation of fulfilment/Embargo clause**

- 9.1. Our fulfilment of the contract is under the reservation of there being no obstacles to it due to national or international regulations with regard to foreign trade law as well as there being no

embargos and/or other sanctions opposing it. In particular, the purchaser is obligated to refrain from doing any business

(a) with any persons, organisations or institutions that are on a sanction list under national banning lists, EU regulations or US export regulations;

(b) with embargo states that are forbidden;

(c) for which the required permit is not available or not applicable;

(d) that are in any way related to the support, development, production or usage of chemical, biological or nuclear weapons of mass destruction.

9.2. The purchaser particularly agrees to inform us immediately and unprompted in writing in so far as he intends to deliver or use/utilise products or services that he received from us in or into regions that are subject to such provisions. He will indemnify us from any legal consequences that result from an infringement on such provisions and shall pay damages to the required extent if we suffer any causal damage.

9.3. The purchaser guarantees that he is not on any US-American, European or national banning lists (e.g.: "Entity List", "Denied Persons List", "Specifically Designated Nationals and Blocked Persons") and that he is not in any way related to the support, development, production or usage of chemical, biological or nuclear weapons of mass destruction. The purchaser shall reimburse us for any and all damage that we suffer as a result of an infringement on this guarantee; in this regard the purchaser indemnifies us from third party claims.

9.4. Should the purchaser infringe on the above stated duties and guarantees, and a contract has already been concluded, we are not obligated to fulfil the contract. Additionally, we have the right to withdraw from the contract or terminate the contract with immediate effect.

Should the purchaser infringe on the above stated duties and guarantees, and a contract has not yet been concluded, our declaration with respect to the conclusion of the contract shall be deemed retracted retroactively with immediate effect."

## **10. Other issues, place of fulfilment, place of jurisdiction**

10.1 Ancillary verbal agreements only count as part of the contract if they are confirmed by us in writing.

10.2 Should a clause of these contractual conditions be completely or partially void and/or ineffective, the remaining conditions will not be affected. Rather, an ineffective condition should be replaced by another which is as near as possible to the economic intention.

10.3 If the purchaser is a businessman, Munich is the exclusive place of jurisdiction. The same place of jurisdiction applies if at the time of instigation of a lawsuit the purchaser has no general place of jurisdiction in the Federal Republic of Germany. The purchaser is, however, entitled to call upon any responsible court which can be deemed legally responsible.

10.4 The laws of the Federal Republic of Germany apply. The Hague Convention of 1<sup>st</sup> July 1964, concerning uniform laws regulating international purchases, and the treaty of the United Nations of 11<sup>th</sup> April 1980, concerning contracts of international sale of movable objects, do not apply.